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To: Office of the Secretary, to forward to:  
Chief Administrative Law Judge Richard L. Sippel

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**Federal Communications Commission  
Office of Secretary**

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT'S**  
**REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT**

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## SUMMARY

Following the issuance of a *Hearing Designation Order* as to whether the license of San Francisco Unified School District ("SFUSD" or the "District") for noncommercial educational radio station KALW(FM), San Francisco, California ("KALW" or the "Station"), should be renewed, a five day hearing was held before the Presiding Judge. The record developed in this proceeding, including direct written testimony, live cross-examination and contemporaneous written memoranda and other documentary evidence, establishes that SFUSD's license should be renewed.

There is no dispute that the certification in SFUSD's license renewal application submitted on August 1, 1997 ("License Renewal Application") as to compliance with Commission regulations of KALW's public inspection file ("PIF") was incorrect. However, this proceeding has established that no intentional misrepresentations or lack of candor were made by SFUSD.

As to the original PIF certification, former General Manager Jeffrey Ramirez prepared the 1997 License Renewal Application in good faith and has been consistently honest and open about his mistaken response on the PIF certification. The Bureau's emphasis on the hearsay statements of Susen Hecht and Dave Evans is wholly misplaced as Mr. Ramirez does not contend that the KALW PIF was in compliance with Commission requirements when he first reviewed it. His mistake was in good faith believing that his efforts undertaken to document examples of responsive programming late in the renewal term and the filing of the 1997 ownership report sufficed to comply with FCC rules.

In October 1997, Mr. Ramirez was presented with a list of allegations by Golden Gate Public Radio ("GGPR"), including the allegations that the PIF was not in compliance with

Commission requirements because it was missing supplemental ownership reports for 1993 and 1995 to reflect interim Board of Education elections and because the City Visions programs list was incomplete and placed in the PIF in July 1997. Upon reviewing the GGPR PIF allegations, Mr. Ramirez informed outside communications counsel in a written memorandum that these allegations were accurate and that the District should "correct with explanation." Mr. Ramirez then clearly admitted to the Commission in his January 1998 Declaration that the PIF certification was based on his mistaken belief that the City Visions list had been sufficient to comply with the issues/programs requirement, and that the annual ownership report filed with the License Renewal Application had been sufficient to comply with the ownership report requirement. Notwithstanding this clear admission, unfortunately, the District's then communications counsel did not follow-up with a formal "correction with explanation" by an official amendment of the License Renewal Application to change the PIF certification to "No" with explanation, a step not taken until the District retained new counsel after the matter was designated for hearing. In sum the record here – including Mr. Ramirez's October 1997 Memorandum to counsel and his testimony at hearing – establish that the PIF certification error was not intentional and once Mr. Ramirez was informed of the mistake, he admitted it to counsel and the Commission, actions that would not be expected if the mistaken certification only a few months earlier had been intentional.

The Bureau's theory that Mr. Ramirez and/or Mr. Helgeson's 1998 declarations contained intentional misrepresentations or lacked candor as to the maintenance of KALW's PIF is not supported by either the plain language of the declarations or the credible testimony of these witnesses. Neither was intended by the declarants to avow that the PIF had been maintained by Mr. Ramirez immediately upon his coming to KALW.

Regarding the response to the Letter of Inquiry from the Media Bureau of the Commission dated February 5, 2001 (the "LOI"), Mr. Helgeson and Ms. Sawaya provided counsel with honest assessments of the current condition of KALW's PIF and trusted outside communications counsel to convey that information accurately to the Commission. Neither Ms. Sawaya nor Mr. Helgeson had any knowledge of the condition of the PIF in 1997, which was the primary focus of the LOI. While SFUSD agrees that Station personnel failed to exercise proper diligence in obtaining and reviewing the response to the LOI, they reasonably had expected such counsel to impart to the Commission accurate information in response to the LOI. Credible testimony as corroborated by documentary evidence establish that there was no intentional misrepresentation or lack of candor on the District's part in responding to the LOI.

The Bureau clearly failed to meet its burden on the added issue related to deposition testimony in 2004. Notwithstanding that the issue was added citing the imperative for Bureau cross-examination, the Bureau abdicated that responsibility and essentially folded its cards on the issue at hearing. In any event, it is clear from the direct testimony and documentary evidence that the Station's employees did not engage in misrepresentation or lack of candor during their depositions.

*Arguendo*, even if acts of intentional misrepresentation were deemed to have occurred, the record supports renewal of SFUSD's license to operate KALW. The Station provided meritorious service; has not been subject to any other notices of violation; and SFUSD has implemented procedures to ensure future compliance, including the retention of new outside communications counsel. No additional deterrent effect would be expected by denial of renewal, as the hardships of this prolonged renewal proceeding alone have loudly delivered the message to the District and other FCC licensees of the high degree of forthrightness and candor

expected of Commission licensees. Here, mitigating factors such as the licensee's good faith *reliance on counsel, its otherwise exemplary record and meritorious service, warrant renewal* of the KALW licesnse.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	MB Docket No. 04-191
	)	
<b>San Francisco Unified School District</b>	)	
	)	
For Renewal of License for Station KALW(FM),	)	Facility ID No. 58830
San Francisco, California	)	File No. BRED-19970801YA

To: Office of the Secretary, to forward to:  
Chief Administrative Law Judge Richard L. Sippel

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT'S  
REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

Both parties – the San Francisco Unified School District (“SFUSD” or the “District”) and the Enforcement Bureau (the “Bureau” or “EB”) – agree that the “Yes” certification to the public inspection file (“PIF”) question on SFUSD’s 1997 application for renewal (the “License Renewal Application”) of its license to operate KALW(FM), San Francisco, California (“KALW” or the “Station”) was inaccurate. That is, issues/programs lists were not placed in KALW’s PIF on a timely basis each quarter during the 1991-1997 license term and, pursuant to a since repealed rule, supplemental ownership reports for 1993 and 1995 were not in the PIF when the License Renewal Application was filed on August 1, 1997. SFUSD presented documentary evidence, written testimony and live witnesses that confirmed that the original PIF certification error was innocently made, and upon the discovery of the error, KALW’s former General Manager fully admitted such mistake to outside communications counsel and acknowledged the mistake to the FCC in his January 1998 Declaration. Likewise, testimony



and documentary evidence demonstrate that, in response to the Letter of Inquiry from the Mass Media Bureau dated February 5, 2001 (the "LOI"), KALW's personnel were forthright in communicating to outside counsel the current state of the PIF and followed-through on counsel's instructions to bring the PIF up to date. Unfortunately, whether inadvertently or not, in both the 1997-98 and 2001 periods, such counsel did not meet its obligation to SFUSD to communicate KALW's admissions to the Commission as clearly as possible.

That is, there is no dispute that SFUSD's outside counsel did a disservice in the manner in which it opposed the November 1997 Golden Gate Public Radio ("GGPR") Petition to Deny (the "Petition to Deny"), in its drafting of the LOI Response and in its wording of the supporting declarations. Regarding SFUSD's January 1998 Opposition to the Petition to Deny, SFUSD's counsel had every right to raise the many procedural infirmities of the Petition to Deny (lack of service, lack of affidavits, lack of first-hand personal knowledge, violation of privacy by using pilfered documents, etc.) and to urge Commission dismissal of the Petition to Deny on procedural grounds. But SFUSD's counsel failed to take the necessary extra step required of Commission licensees when inaccuracies in their pending applications are discovered. That is, after then General Manager Jeffrey Ramirez advised counsel in October 1997 that the PIF certification was inaccurate as charged by GGPR, and noted "Will correct with explanation," no steps were taken during the tenure of the Sanchez Law Firm to amend the License Renewal Application to change the "Yes" PIF certification to "No" with an explanation. The mistaken PIF certification was admitted in Mr. Ramirez's 1998 Declaration, so the Commission was put on notice of the error, but experienced communications counsel should have made sure that the error was corrected in no uncertain terms by official amendment of the License Renewal Application with a full explanation. Unfortunately, that

was not done until SFUSD obtained new counsel after this matter was designated for hearing. Licensees such as SFUSD reasonably rely on outside communications counsel to advise on procedural steps such as when and how corrections to applications should be made and petitions opposed – that is the expertise for which such counsel are retained.

Likewise, SFUSD reasonably relied on outside communications counsel to gather the facts from the appropriate individual with knowledge of the state of the PIF as of August 1997 in responding to those questions in the 2001 LOI. Unfortunately, such counsel did not contact Mr. Ramirez at that time, nor did they appear to consult their own files, their own memories or the January 1998 Ramirez Declaration that they prepared when drafting the inconsistent “Yes” responses to the LOI. This sloppiness carried over to counsel’s draft of Mr. Helgeson’s 2001 Declaration: it was inappropriate for counsel to ask Mr. Helgeson to certify as to the state of the PIF as of August 1997 when he had no personal knowledge of its contents at that time, but could only rely on Mr. Ramirez’s certification, which he did not know had been retracted; and it was inappropriate for counsel to ask Mr. Helgeson to sign a declaration supporting SFUSD’s response to the LOI without providing him the final version. As to the inaccuracies in the LOI Response regarding the condition of the PIF in 2001, while it was reasonable for Mr. Helgeson to have expected counsel to accurately relay the facts he told them (and such facts are confirmed by the notes of Attorney Susan Jenkins), SFUSD is more than disappointed that its employee did not carefully read even the draft LOI Response to ensure that counsel had done so. Following Mr. Helgeson’s deposition in which he acknowledged the inaccuracies in the LOI Response, SFUSD removed Mr. Helgeson from duties involving FCC filings and implemented new measures with new counsel to ensure that FCC filings are accurately made.

As to the added issue of whether misrepresentations were made during the deposition process, the Presiding Judge added that issue so that the witnesses could be observed on the stand. It was so evident from the filed direct testimony and from the demeanor of the witnesses at hearing that there was no issue whatsoever on this matter, that the Bureau essentially folded its cards and did not pursue the deposition testimony upon cross-examination. Clearly, the Bureau did not meet its burden on this added issue.

SFUSD fully acknowledges that its employees are not without blame here. Mistakes were clearly made by KALW's former general manager in preparing the original License Renewal Application and by KALW personnel in failing to exercise more diligence regarding the 2001 LOI Response. But SFUSD and its employees reasonably relied on and expected outside communications counsel, with expertise as to Commission's policies and procedures, to communicate accurately and properly to the Commission their forthright admissions of errors. When SFUSD's employees admitted their mistakes shortly after the License Renewal Application was filed, and again in their 2004 depositions and again at the 2005 hearing, and when SFUSD has implemented corrective measures, the Commission can be assured that SFUSD possesses the qualifications to continue to serve the public interest as the licensee of KALW.

Recognizing that the Commission would not countenance denying renewal of the KALW license for these admitted innocent mistakes and SFUSD's reliance on counsel, in its role as adverse party in this proceeding, the Bureau is driven to craft an intricate eight-year long conspiracy of deceit among former, veteran and brand-new Station employees. While the Bureau's theory of systematic lying as part of an elaborate cover-up might make for compelling novelistic reading, it is neither supported by the documentary record nor the

credible testimony of SFUSD's, or even the Bureau's, witnesses. Only if the Presiding Judge determines that each SFUSD witness who appeared at hearing repeatedly lied about their actions and knowledge, and only if the documentary record corroborating their accounts is ignored, can the Bureau's theory stand. If, however, based on observances of demeanor and the record evidence, the Presiding Judge finds the witnesses credible, there can be no finding of misrepresentation or lack of candor.

Moreover, even assuming for the sake of argument that the mistakes of SFUSD employees were considered to be intentional misrepresentations or lack of candor, the sanction must promote the public interest. Given the remedial measures undertaken by the licensee, and frankly, the lessons learned from this long, expensive proceeding, the licensee "can reasonably be expected to deal truthfully with the Commission in the future."<sup>1</sup> This extensive hearing proceeding itself has been an effective deterrent and lesson to other broadcasters. Taking away the KALW license would not promote the public interest, but would only disserve it by removing KALW as an exemplary service to the community. KALW's thousands of members and listeners, including the children educated by the District and their parents, would lose an irreplaceable voice that has been serving their needs since 1941.

**1. THERE WERE NO INTENTIONAL MISREPRESENTATIONS OR LACK OF CANDOR**

1. The "necessary ingredients" for a finding of misrepresentation or lack of candor are "deliberateness and fraudulent intent." *Family Broadcasting*, 20 FCC Rcd 9463, 9474 (ALJ Sippel 2005) (citing *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir.

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<sup>1</sup> See *The Lutheran Church/Missouri Synod*, 12 FCC Rcd 2152, 2166-67 (1997) (license renewal granted when Commission determines on the record "that the licensee can reasonably be expected to deal truthfully with the Commission in the future"), *vacated on other grounds*, *The Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998).

1980)). *Fraudulent intent requires “the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity.” Id.* The lack of evidence of intent to conceal, and “observations of demeanor” at hearing preclude adverse findings of intentional misrepresentation or lack of candor.” *Id.* See also *Amendment of Section 1.17*, 18 FCC Rcd 4016, 4020 (2003) (finding of misrepresentation or lack of candor requires “an actual intent to deceive the Commission.”); *Riverside Broadcasting Company Inc.*, 104 F.C.C.2d 644, 647-48 [¶ 8] (1986) (substantial evidence of an “intent to deceive” is the “sine qua non of a misrepresentation issue.”).

2. It is ironic that the Bureau relies so heavily on *Fox River Broadcasting, Inc.*, 93 FCC2d 127, 129 (1983) in claiming that statements made in deposition – without the benefit of documents later disclosed – can form the basis for a finding of lack of candor. The Commission in *Fox River* held the opposite. The *Fox River* decision is instructive because the facts closely parallel the allegations made here. In *Fox River*, the Commission reversed the Review Board’s decision where a witness had “failed to exercise due care” under cross-examination at deposition and, upon being presented later with evidence refreshing his recollection and illustrating the apparent inconsistency, promptly corrected the testimony. *Id.* The Commission held such conduct to fall well short of any “overt or intentional misconduct.” The Commission went on to disavow the Review Board’s suggestion that lack of candor may involve failures to provide information in the absence of any deceptive intent. *Id.* This is precisely what the Bureau itself has done in this case.

3. The mere existence of a mistake in an application does not equal misrepresentation. *Cannon Communications Corp.*, 5 FCC Rcd 2695, 2700 [¶ 26] (Rev. Bd. 1990); *Swanco Broadcasting, Inc.*, 40 F.C.C.2d 753, 755-56 [¶ 6] (1973) (no misrepresentation

where lack of oversight or carelessness results in the unfortunate filing of inaccurate applications.); *Fox River Broadcasting, Inc.*, 93 F.C.C.2d 127, 129 [¶ 6] (1983) (noting that both misrepresentation and lack of candor “represent deceit”). In fact, even “[c]arelessness, exaggeration or slipshoddiness, which lack the necessary element [of willfulness] do not constitute misrepresentation.” *F.B.C. Inc.*, 3 FCC Rcd 4595, 4597 (Mass Media Bur. 1988).

**A. MR. RAMIREZ PREPARED THE 1997 LICENSE RENEWAL APPLICATION IN GOOD FAITH AND HAS BEEN CONSISTENTLY HONEST AND OPEN ABOUT HIS MISTAKE**

4. There is no dispute that the KALW PIF did not contain all required quarterly issues/programs lists or supplemental ownership reports when the License Renewal Application was filed in August 1997. Mr. Ramirez has consistently admitted that his initial response to the PIF certification was incorrect. His veracity regarding this point is buttressed by the evidentiary record, which shows that once Mr. Ramirez fully understood the FCC rules regarding the PIF, he readily admitted his mistake to counsel in his memorandum to Attorney Sanchez dated October 4, 1997 (the “October 1997 Memo”) and in his January 17, 1998 Declaration (“January 1998 Declaration”), filed with the Commission. (SFUSD Exh. 4 at 50, SFUSD Exh. 6.) Moreover, Mr. Ramirez’s testimony at his deposition and at hearing was precisely what the Bureau asserts that the Commission should expect from its applicants: truthful, candid and forthright. Mr. Ramirez again acknowledged, as he had in October 1997 and January 1998, that the original PIF certification on the License Renewal Application was not accurate. The undisputed evidence, however, is that Mr. Ramirez’s PIF response on the License Renewal Application was not intentionally false.

5. The 1997 License Renewal Application was Mr. Ramirez’s first such application, and Mr. Ramirez acted in good faith to accurately answer the various questions

and requirements listed therein. (SFUSD Findings ¶¶ 41, 71-74.) The Bureau acknowledges that Mr. Ramirez testified that he had reviewed the license renewal application form's instructions before he completed the application and consulted with various prepared guidelines, including a counsel memo from the National Association of Broadcasters ("NAB"). (EB Findings ¶¶ 23-24.) The Bureau further does not contest Mr. Ramirez's testimony that he received instructions from the Sanchez Law Firm as to how the License Renewal Application should be completed and that the License Renewal Application was ultimately vetted by the Sanchez Law Firm prior to filing. (EB Findings ¶¶ 25, 27.) Nor could they -- this testimony is the precise information Mr. Ramirez provided to the Commission in 1998. (SFUSD Exh. 4 at 50.)

6. But Mr. Ramirez never stated that he thought that the PIF, when he first focused on it, was complete. His testimony (direct and cross) are consistent that, based on his own review of the PIF, he thought the PIF as it related to issues/programs lists was in fact deficient, and he worked to improve the documentation by asking John Covell and other producers to complete issues-programs lists. (SFUSD Findings ¶¶ 77-81.) His mistake was in assuming that any such list placed in the PIF at the end of the term met the requirements of the FCC regulation. Since the issues/programs reports had to be placed in the file on a quarterly basis, Mr. Ramirez clearly was wrong in assuming that efforts to complete the file in 1997 constituted compliance. Moreover, with regard to the ownership reports, the contemporary documents created in 1997 and 1998 show that Mr. Ramirez mistakenly believed that the 1997 ownership report was sufficient, and therefore he did not realize that there was a need to review the PIF to determine whether any required supplemental ownership reports were filed, and to correct and explain if any such reports were missing.

7. *Although Mr. Ramirez properly completed virtually all of the License Renewal Application questions, he misunderstood the Commission's PIF requirements. At hearing, Mr. Ramirez candidly explained: "I was either working too fast, not paying attention, but I do remember reading through the regulation. The fact that the reports had to be there in the file on a quarterly basis by a certain date, I'm sorry I missed that detail. I think that's where I made the mistake and that's where I misunderstood what we had to have in the file by when and how I should've answered the question differently."* (SFUSD Findings ¶ 377.)

8. Mr. Ramirez attempted to educate himself on the various factual and legal questions raised in the License Renewal Application. With regard to the PIF, he knew that the Station had been meeting its obligations to address issues of public importance with responsive programming; and knew that he was filing a current ownership report with the renewal application. With regard to issue/program lists – he focused on what he thought was the key point of the PIF certification – that issues of importance to the community were in fact addressed by the Station and then documented in issues/programs lists. (SFUSD Findings ¶¶ 76-80.) Thus, Mr. Ramirez did what he thought was needed to bring the PIF into compliance and allow SFUSD to check "Yes" on the form – making sure the file was then supplemented with issues/programs lists of at least one of the Station's long-running programs that addressed issues of public importance.

9. After submission of the License Renewal Application, Mr. Ramirez received a copy of the GGPR allegations provided by GGPR counsel, which clearly outlined the FCC requirements related to supplemental ownership reports and quarterly programs/issues lists. (SFUSD Findings ¶¶ 101-108.) Immediately upon reviewing these allegations and rules, Mr. Ramirez admitted his mistake, both in his October 1997 Memo to Attorney Sanchez, and



in his January 1998 Declaration filed with the Commission. From that point forward, Mr. Ramirez has consistently admitted that the 1997 License Renewal Application PIF certification was inaccurate, and that the inaccuracy was due to his mistaken understanding of FCC requirements prior to filing the License Renewal Application.

**1. The Bureau Provides No Evidence to Support Its Contention That Mr. Ramirez Made Misrepresentations or Lacked Candor When He Prepared the 1997 License Renewal Application.**

10. The Bureau fails to provide any evidence that Mr. Ramirez made an intentional misrepresentation or lacked candor when he prepared the 1997 License Renewal Application. In order to establish this point, the Bureau would need to show that Mr. Ramirez knew that the PIF did not meet Commission requirements *when he prepared the certification that was filed on August 1, 1997*. See *Liberty Cable Co.*, 11 FCC Rcd 14133, 14139 (1996) (“In order to commit misrepresentation or breach a duty of candor, the licensee must possess an intent to deceive at the time that it made a misrepresentation[.]”) (emphasis added).

11. Because the Bureau has no such evidence, it instead goes to great lengths to establish the *undisputed* point that the KALW PIF did not contain the necessary quarterly issues/programs lists and supplemental ownership reports when the License Renewal Application was filed in August 1997.<sup>2</sup> As discussed above, Mr. Ramirez has consistently

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<sup>2</sup> For example, the Bureau submits that the certification was knowingly false because the PIF was missing at least two supplemental ownership reports (EB Findings ¶¶ 91, 92), the PIF did not contain issues/programs lists until July 1997 (EB Findings ¶¶ 91, 93), and because SFUSD did not provide evidence to show that its producers prepared issues/programs lists during the relevant renewal period (EB Findings ¶¶ 93). The Bureau concludes that SFUSD’s failure to address these “evidentiary gaps” proves that the PIF certification on the License Renewal Application was knowingly false. (EB Findings ¶ 96.) However, SFUSD did not attempt to address these issues because it has not disputed the fact that the PIF did not include these required documents when the certification was filed in August 1997. In fact, SFUSD submitted an amendment to the License Renewal Application that changed the “Yes” certification regarding the PIF to “No.” (SFUSD Exh. 76.) The issue in dispute is whether

*acknowledged this point both in contemporary written documents and in his testimony in this proceeding.* In his January 1998 Declaration to the Commission, Mr. Ramirez acknowledged that when he prepared the License Renewal Application certification, he mistakenly believed that (1) the current annual ownership report was sufficient to comply with the FCC rule, and (2) that the City Visions issues/programs list would satisfy the FCC rule related to issues/programs lists. (SFUSD Exh. 4 at 50.)

12. Therefore, while the KALW PIF did fail to satisfy Commission requirements in August 1997, Mr. Ramirez failed to identify this fact prior to his submission of the License Renewal Application due to his misunderstanding of Commission requirements. Because of this erroneous understanding, he did not identify the full extent of the deficiencies in the PIF in his review prior to submitting the License Renewal Application; and did not realize that the steps he had taken to address those insufficiencies that he did identify were inadequate to support an affirmative certification. However, as the Bureau acknowledges in its own proposed conclusions of law, "false representations that result from negligence, while not condoned, do not rise to the level of disqualifying misconduct." (EB Findings ¶ 90; *citing In re Application of Pinelands, Inc.*, 7 FCC Rcd 6058, P 25 (1992)).

13. The crux of the Bureau's so-called "evidence" that Mr. Ramirez intentionally misled the Commission is that, prior to completing the License Renewal Application, he had notice that the PIF was incomplete from Mr. Evans and Ms. Hecht. The evidence and testimony provided at hearing demonstrated that neither of these individuals provided Mr. Ramirez with information that corrected his mistaken belief that the current ownership

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Mr. Ramirez knew that the PIF did not meet FCC requirements when he filed the License Renewal Application in August 1997. The evidence in record overwhelmingly shows that he did not.

*report and the City Visions list would satisfy the PIF inquiry posed on the License Renewal Application. Therefore, neither of them provided him with information that would have caused him to doubt the validity of the 1997 certification.*

14. In Mr. Ramirez's first months at the Station, he met with Mr. Evans, the Station's engineer, to discuss engineering matters related to the physical relocation of the Station. (SFUSD Findings ¶¶ 49, 51, 55.) In Mr. Ramirez's early days at the Station – up to nine months before he had received the renewal application – Mr. Evans raised the subject of the PIF, although it is unclear what he specifically said. (SFUSD Findings ¶¶ 17, 37, 49, 52.) Mr. Ramirez testified that “[Mr. Evans] had tried to bring my attention to the public inspection file, but because back then I just didn't know the significance of the public inspection file, understand the purpose of it, and because it just wasn't part of what I expected Dave, in my working relationship with him, to call to my attention, I didn't do anything with it at the time.” (SFUSD Findings ¶ 54.) Moreover, Mr. Ramirez testified that Mr. Evans did not say anything to him with respect to ownership reports or quarterly issues reports, and he never again raised the subject of the PIF. (SFUSD Findings ¶¶ 52, 53.)

15. When Mr. Ramirez did receive the License Renewal Application months later, he reviewed the PIF and determined that that the file was unorganized and required better documentation of the significant issues covered by KALW programming. (SFUSD Findings ¶¶ 77-81.) Therefore, while Mr. Ramirez did eventually review the file as suggested by Mr. Evans, and did identify problems with the PIF, Mr. Ramirez did not receive or recall information from the brief conversation in his first weeks at the Station that would have informed his assessment of whether the file met the detailed requirements outlined in FCC regulation.

16. Similarly, Susen Hecht did not provide Mr. Ramirez with any information that would have corrected his mistaken understanding of FCC rules that resulted in the erroneous certification. In order to prepare the License Renewal Application, Mr. Ramirez requested that a station volunteer who came in once a week to answer phones and stuff envelopes to assist him by putting the PIF into some sort of order. (SFUSD Findings ¶ 57.) He did not provide the volunteer, Susen Hecht, with the renewal application nor the Commission rules related to the PIF, because he expected to personally complete the renewal application. (SFUSD Findings ¶ 59.) When some time passed and the PIF appeared in the same disorganized state, Mr. Ramirez personally conducted a review of the PIF. (SFUSD Findings ¶¶ 61, 62.) When Ms. Hecht finally left her "list" in Mr. Ramirez's mailbox, he found that it did not appear to be professional, reliable work, was littered with typos, and was not easily reviewable. (SFUSD Findings ¶ 63.) After flipping through the document for two or three seconds, he set the list aside and completed his own direct review of the PIF. (SFUSD Findings ¶ 63.)

17. Indeed, even if Mr. Ramirez did carefully read Ms. Hecht's list and was able to decipher its meaning, it would not provide support for the contention that Mr. Ramirez knew the PIF failed to satisfy FCC regulations or that his efforts to supplement the file before filing the License Renewal Application would be inadequate. At the time he completed the License Renewal Application, Mr. Ramirez believed that the current ownership report and the City Visions list were sufficient to satisfy the renewal application inquiry. Therefore, Ms. Hecht's list of incomprehensible headings and dates of various documents would not have informed Mr. Ramirez that the PIF did not conform to Commission requirements. Notably, even the Bureau, after significant review and analysis of Ms. Hecht's document, is unable to decipher the meaning of the terminology used by Ms. Hecht. (EB Findings ¶ 20, fn. 48.) The Hecht

list, unlike the October 1997 GGPR list of allegations, did not inform Mr. Ramirez of the relevant FCC rules by stating that the membership of the Board of Education had changed frequently since 1991 so that supplemental ownership reports needed to be in the PIF; and did not state, unlike the October 1997 GGPR list, that the quarterly issues/programs lists requirement was not met by a list of topics covering only a portion of the license term placed in the PIF in July 1997.

18. Repeatedly in its Proposed Findings, the Bureau asserts that a party's failure to bring forward a supporting witness at hearing automatically indicates that such witness would harm that party's case. (*See, e.g.*, EB Findings ¶ 96 fn. 306.)<sup>3</sup> It is therefore interesting that the Bureau chose to base its allegations of intentionally false certification on the two brief, conclusory 1997 declarations of a decedent (Dave Evans) and a witness they chose not to subpoena (Susen Hecht), so that their statements would not be subject to cross examination. The Bureau presented only one witness to support their theory as to Mr. Ramirez's intent: Jason Lopez. However, this witness did not testify to any personal knowledge regarding Mr. Ramirez's state of mind when he filed the License Renewal Application. (SFUSD Findings ¶ 379).<sup>4</sup>

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<sup>3</sup> The Bureau also alludes in its Finding to certain documents referenced in the record, such as an October 1997 PIF inventory, but not produced by SFUSD (EB Findings fn 99 and ¶ 95). Notwithstanding the Bureau's unspoken innuendo, not only were all responsive documents in SFUSD's possession produced to the Bureau, but so that the Commission could have a complete record, SFUSD waived the attorney-client privilege for the subject time period.

<sup>4</sup> The Bureau asserts that because SFUSD did not subpoena principals of the Sanchez Law Firm to testify at hearing it should be inferred that such testimony would have been unfavorable to SFUSD. (EB Findings n.355.) However, the documentary record of attorney-client communications fully supports SFUSD; it is the Bureau's version of events that is not supported by the record. Thus, if the Bureau thought that the testimony of Attorneys Sanchez and/or Jenkins could have assisted in countering the record, the burden was on the Bureau to call them. In sum, if there is to be an inference, it goes the other way – it should be

19. However, Mr. Lopez's testimony was instructive in that it generally discredited the two declarations that form the basis of the Bureau's case. In his brief time on the witness stand, Mr. Lopez contradicted his previous deposition testimony, contradicted his own testimony at hearing regarding Ms. Hecht's declaration, admitted that he had no personal knowledge of what Ms. Hecht was asked to do related to the PIF, never saw Ms. Hecht review the PIF or consult the renewal application or applicable Commission regulations, never discussed with Mr. Ramirez what Ms. Hecht found in the PIF, and did not know the meaning of her "list." (SFUSD Findings ¶¶ 379-381.) With regard to Mr. Evans, Mr. Lopez conceded that Mr. Evans improperly removed confidential documents from KALW, and that someone who steals documents – like Mr. Evans – cannot be trusted. (SFUSD Findings ¶¶ 124-126.)

20. The Bureau's final piece of "evidence" to support its contention that the 1997 License Renewal Application PIF certification was knowingly false is its statement that "[f]urther evidence that Mr. Ramirez knew of the PIF's shortcomings appears when he responded to GGPR's Petition Memo insofar as it attacked the PIF's shortcomings in early October and acknowledged to Mr. Sanchez that the PIF did not contain required ownership information or issues/programs lists." (EB Findings ¶ 95.) The Bureau thereafter concludes: "[i]n sum, the record evidence demonstrates that SFUSD's certification about the PIF was knowingly false." (EB Findings ¶ 96.) Clearly, Mr. Ramirez's review of the October 1997 GGPR memo two months after he submitted the August 1997 License Renewal Application does not provide any support for the Bureau's contention that Mr. Ramirez made an intentional misrepresentation or lacked candor when he submitted the PIF certification in August 1997. To the contrary, the evidence cited by the Bureau supports the fact that Mr. Ramirez was

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inferred that the testimony of Attorneys Sanchez and Jenkins would have been detrimental to the Bureau's theory that KALW staff intentionally misled the Commission.

honest about the mistake once he reviewed the memo from GGPR counsel that explained the Commission rules and their application to the KALW file.

21. The testimony and documentary evidence overwhelmingly demonstrate that Mr. Ramirez did not make intentional misrepresentations or lack candor when he prepared the PIF certification on the 1997 License Renewal Application.

**B. UPON DISCOVERY OF THE ERRONEOUS PIF CERTIFICATION, MR. RAMIREZ INFORMED OUTSIDE COUNSEL AND THE COMMISSION REGARDING HIS MISTAKE**

22. After filing the License Renewal Application, Mr. Ramirez came to understand that he had made a mistake in the application with respect to the specific requirements of Section 73.3527. In his October 4, 1997 memorandum to Attorney Sanchez, Mr. Ramirez advised counsel that the PIF certification was inaccurate, that it "mattered" to the Commission, and that information should be "corrected with explanation." There is no dispute to this testimony – the October 1997 Memo speaks for itself. When Mr. Ramirez was presented, via the October 1, 1997, Attorney letter from the law firm of Berchenko & Korn on behalf of GGPR (the "Berchenko Letter"), with the charge that the City Visions list had been placed in the PIF in July 1997 and there had not been supplemental ownership reports for 1993 and 1995, he immediately acknowledged the accuracy of the allegations to counsel and asked counsel to correct with explanation. If Mr. Ramirez had knowingly lied on the License Renewal Application only two months prior, he would have been expected to continue to obfuscate the matter. Instead, he willingly admitted the error in a written document to his attorney. If Mr. Ramirez was attempting to hide the information, or did not want it to be disclosed to the Commission, he would not have sent the October 1997 Memo to Attorney Sanchez.

23. Moreover, not only did Mr. Ramirez advise counsel of his errors, he informed the Commission. Although one could argue for a different choice of words in the Ramirez January 1998 Declaration – which wording was proposed by counsel – there can be no mistaking the clear intent of his statement: “My understanding of what information was required to be provided and certified was not complete and I believe I may have misunderstood what was required in completing Section III, Questions 1, 2 and 3.” (SFUSD Exh. 4 at 50.)

24. Specifically, Mr. Ramirez explained to the Commission his erroneous understanding of the License Renewal Application question related to ownership reports , stating that: “I believe at the time I responded “yes” to Question III.1.(a) and (b) [of Section III], those only referred to KALW’s having filed with the Commission, respectively, a current Annual Employment Report and a current Annual Ownership Report. Since such Reports were to be attached to and filed with the license renewal application, I believed that “Yes” was the appropriate response.” (SFUSD Findings ¶ 135.) With regard to his erroneous understanding of the issues/programs lists rule, he explained: “I also believed that I had fully accounted for all public issues/programs during my tenure as General Manger in the document which Petitioner has labeled O [Mr. Covell’s City Visions list], which is what I believed was called for by the question and the rule.” (SFUSD Findings ¶ 138.)

**1. The Bureau Provides No Evidence to Show Misrepresentation or Lack Of Candor Once Mr. Ramirez Realized His Mistake. The Documentary Evidence Demonstrates That Mr. Ramirez Consistently Admitted His Mistake To Counsel and The Commission.**

25. As described above, Mr. Ramirez’s January 1998 Declaration filed with the Commission clearly states that when he filed the License Renewal Application, he had an incomplete and erroneous understanding of what was required in the application’s question related to the PIF. This statement alone notified the Commission that Mr. Ramirez made an



error with regard to his completion of the PIF question in the License Renewal Application. However, Mr. Ramirez did not stop there – he further provided two examples that explained the basis for his misunderstanding regarding what the Commission rules required related to ownership reports and to programs/issues lists.

26. While the Bureau cannot deny Mr. Ramirez's admission of mistakes related to the License Renewal Application PIF certification, it has instead chosen to allege that Mr. Ramirez lacked candor because his January 1998 Declaration was not detailed enough regarding the various items missing from the PIF. The Bureau argues that Mr. Ramirez lacked candor because his declaration did not specifically acknowledge the missing 1993 and 1995 supplemental ownership reports, and did not specify that he had not requested issues/programs lists from his producers during his tenure. (EB Findings ¶¶ 99-100.)

27. This argument is wholly without merit. The issue is whether Mr. Ramirez informed the Commission that the PIF certification on the License Renewal Application was incorrect – or whether he attempted to lie to conceal his error. Without doubt, the Commission was informed of Mr. Ramirez's mistake by the January 1998 Declaration. While the declaration did not list every missing document that should have been in the file during the renewal period, it made it clear that the "Yes" response was mistakenly based on two solitary documents that clearly did not satisfy the rules. The Commission was obviously aware that a current annual ownership report and a program/issues list that did not cover the entire license term would not be sufficient to meet the PIF rule requirements.<sup>5</sup> Therefore, Mr. Ramirez's

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<sup>5</sup> Moreover, Mr. Ramirez completed the 1993 and 1995 supplemental ownership reports and dated them both December 1997. He made no attempt to conceal the late date on these documents, which would reveal their untimely filing on their face. (SFUSD Findings ¶ 119.)